IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

BETTY JEAN STEWART, WILLIE J. BUCHANAN, and WILLIES WHAT NOT SERVICE, LLC.,	)	No. CPU6-10-001841
Appellants/ Defendants Below.	)	
vs.	)	
ARLINA HENDRICKSON,	)	
Appellee/ Plaintiff Below.	)	

Submitted August 8, 2011
Decided September 1, 2011

H. Cubbage Brown, Esquire, Attorney for Appellants
David C. Hutt, Esquire, Attorney for Appellees

DECISION ON APPEAL OF COMMISSIONER'S FINDINGS

Defendants-below Betty Jean Stewart, Willie J. Buchanan, and Willies Whatnot Service, LLC ("Appellants") hereby move the Court to reconsider the Commissioner's recommendation of default judgment in favor of Plaintiff-below Arlina Hendrickson ("Appellee"). For the reasons stated herein, Appellant's motion is **GRANTED**.

Appellants perfected their appeal of this matter from the Justice of the Peace Court without the assistance of counsel. Soon thereafter, Appellants retained the services of H. Cubbage Brown, Esquire, and delivered to Mr. Brown

all documents associated with this case. Among these documents was notice of a pre-trial hearing before the Commissioner to be held on April 21, 2011.

Mr. Brown explains in his clients' motion that, due to staff transfer and upheaval, he overlooked the pre-trial hearing date and failed to appear. Without the benefit of this information, or Mr. Brown's entry of appearance, the Commissioner recommended that the Court enter an order of default in favor of Appellee. Mr. Brown contends that his absence at the hearing amounts to excusable neglect, that he has been in contact with Appellee's counsel, and that his clients have a legitimate claim that should be heard by the Court.

A default judgment is a case-dispositive determination. When reviewing a Commissioner's recommendation on a case-dispositive matter, the judge of the Court reviews the decision *de novo*. A judge may accept, reject, or modify in whole or in part the findings or recommendations made by the Commissioner.[1]

Court of Common Pleas Civil Rule 60(b) (1) provides that the Court may relieve a party from a final judgment for "Mistake, inadvertence, surprise, or excusable neglect …." A motion for such relief is subject to the discretion of the trial court.[2] In using this discretion, the Court liberally construes Rule 60 in favor of its preference to hear cases on the merits.[3] To succeed, Appellant must demonstrate three elements: "(1) excusable neglect in the conduct that allowed the default judgment to be taken; (2) a meritorious defense to the action that

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[1] *Ct. Com. Pl. Civ. R.* 112(A)(4)(iv).
[2] *Perry v. Wilson,* 2009 WL 1964787 (Del. Super. Ct. July 8, 2009) (wherein, the court applied a rule identical to Ct. Com. Pl. Civ. R. 60).
[3] *Keystone Fuel Oil Co. v. Del-Way Petroleum, Inc.,* 364 A.2d 826, 828 (Del. Super. Ct. 1976).

would allow a different outcome to the litigation if the matter was heard on its merits; and (3) a showing that substantial prejudice will not be suffered by the [Appellee] if the motion is granted."[4]

The Court finds that Mr. Brown's failure to schedule and appear before the Commissioner at the pre-trial hearing is excusable neglect in light of the unique circumstances presented by the transfer of his staff and the resulting neglect in docketing the date of the pre-trial conference. None of the neglect in this instance was attributable to his clients, the Appellants. In assessing whether a moving party's conduct is excusable, the Court examines the facts of each case to determine whether the neglect is that of a reasonably prudent person under the circumstances.[5] Here, the Court does not find that Mr. Brown or Appellants acted unreasonably in light of the confusion related to the staffing change.

In addition, counsel for Appellants, as an officer of the Court, maintains that his clients have a legitimate claim to pursue in this matter. The Court accepts this representation as demonstration that a different outcome may result if this matter is heard on its merits. Finally, the Court does not find that the prejudice to the Appellee occasioned by the granting of this appeal will be substantial. In fact, no final judgment was entered in this matter, inasmuch as a Judge of the Court had yet to accept the Commissioner's recommendations. Any

[4] *Verizon Delaware, Inc. v. Baldwin Line Constr. Co.,* 2004 WL 838610, at *1 (Del. Super. Ct. Feb. 27, 2004).
[5] *McMartin v. Quinn,* 2004 WL 249576, at *2 (Del. Super. Ct. Feb. 3, 2004).

prejudice to Appellee is outweighed by the "basic underlying policy which prefers that a defendant have his day in court."[6]

Accordingly, Appellants' motion is **GRANTED.** The Commissioner's recommendation to enter default judgment against Appellants is **REJECTED.** Appellants shall file their portion of the Pre-Trial Worksheet within fifteen (15) days of this Order, and the Clerk of the Court shall schedule a Pre-Trial Conference before the Commissioner for the next available date.

IT IS SO ORDERED, this _____ day of September, 2011.

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Kenneth S. Clark, Jr.
Judge

[6] *Keystone,* 364 A.2d at 828.